HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.2351 OF 2001

Date of decision : 14.02.2007

Baljit Singh & others **.....Petitioners**

versus

Arjan Singh and others **....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.M.S.Lobana, Advocate for the petitioners.

* * *

ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court on 28.3.2001 whereby plaintiffs were called upon to affix the ad valorem Court fee in respect of two sale deeds executed on 13.8.1996 as it was found that such Court fee is payable thereon in terms of Article 1 Schedule 1 of the Court Fees Act, 1870 (hereinafter referred to as the Act).

The plaintiff-petitioners filed a suit for declaration to the effect that the plaintiffs are owners in possession of the suit land on the basis of adverse possession. During the pendency of the said suit, two sale deeds were executed on 13.8.1996. The petitioners impleaded the vendees on the basis of such sale deeds as defendants, but the defendants moved an application for directing the plaintiffs to affix Court fee which has been allowed by the learned trial Court.

The petitioners are not party to the sale deeds dated 13.8.1996. In fact the vendees have been impleaded only to bind them with the judgment and decree that may be passed in that suit for

declaration, therefore, I do not think that the plaintiffs can be called upon to affix the Court fee as such suit does not fall within Article 1 Schedule 1 of Act. The sale deeds executed on 13.8.1996 are in fact after the filing of the suit on 25.7.1996 and prima-facie hit by the doctrine of lis pendens. The principle that ad valorem Court fee, as contemplated under Article 1 Schedule 1 of the Act, is payable in a suit for declaration where the substantive relief is of possession, is not applicable in the present suit as the plaintiffs claim to be in possession and, in fact, is not party to the sale.

In view of the above, the present revision petition is allowed. The order passed by the learned trial Court calling upon the plaintiffs to affix the ad valorem Court fee is found to be not sustainable in law. The said order suffers from patent illegality and irregularity and, therefore, the is set-aside.

The plaintiffs through their counsel are directed to appear before the learned trial Court on 19.3.2007 for further proceedings.

(HEMANT GUPTA)
JUDGE

February 14, 2007
**mohinder*